IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

WP(C).No. 20506 of 2007(N)

PETITIONER:

SATHIABHAMA M.,
MANAGER, ALP SCHOOL, MUTHUKUNNI,
P.O. AYIROOR, PALAKKAD DISTRICT.

BY ADV. SRI.P.K.SURESH KUMAR
SMT.PRIYA VIJAYAN

RESPONDENTS:

1. THE STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, DEPARTMENT OF GENERAL EDUCATION, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
THIRUVANANTHAPURAM.

3. THE ASSISTANT EDUCATIONAL OFFICER,
ALATHUR, PALAKKAD DISTRICT.

BY G.P. SMT.M.R.SREELATHA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

==========

W.P.(C).No.20506 of 2007

==========

Dated this the 17th day of September, 2007

J U D G M E N T

The petitioner is the manager of an aided school. This writ petition is filed seeking a direction to the 3rd respondent to treat the admission of the students contained in Ext.P5 list as regular and to count the said students for staff fixation without insisting for the production of birth certificates. The contention of the petitioner is that in so far as the Kerala Education Rules provide for admission of students after obtaining a declaration from the parents regarding the date of birth of the pupil admitted, the authorities cannot insist upon production of birth certificates in order to take into account the number of those pupils also for the purpose of staff fixation.

2. The learned Government Pleader, on instructions, submits that as per the orders issued by the Government production of birth certificate has been made compulsory for

admission to schools in Kerala and therefore, the petitioner cannot contend that the declaration submitted by the parents in that regard is sufficient.

3. In answer to the said contention, the petitioner would contend that this question was considered by this court in Ext.P4 judgment holding that as long as Rule 1 of Chapter VI of KER is not amended appropriately, schools are entitled to admit students in the light of the provisions of the said rule. The said rule permits admission of students on the basis of the declaration of the parent regarding the date of birth of the ward.

4. I have considered the rival contentions.

5. The order issued by the Government in this regard is only an executive order. An executive order cannot amend the provisions of a statute, which is the settled law on the subject. That being so, the respondents cannot contend that notwithstanding Rule 1 of Chapter VI of KER, birth certificate should be made compulsory for admission to aided schools also. This view is fortified by Ext.P4 judgment with which I respectfully

agree. In fact following the very same decision, I had rendered a judgment in W.P(C).No.33964/2006 on the same lines. In the above circumstances, the petitioner is entitled to the relief prayed for in this writ petition. Accordingly, it is declared that the admissions given to the students in the petitioner's school, as per Ext.P5 list is legal and valid. Consequently, the petitioner is entitled to have the student strength and staff strength fixed taking into account those students also. Orders in this regard shall be issued within one month from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

Sd/-

sdk+ S.SIRI JAGAN, JUDGE

///True copy///

P.A. to Judge.